

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

EVA ANDERSON

PLAINTIFF

V.

CIVIL ACTION NO. 2:15-CV-88-KS-MTP

WELLS FARGO BANK, NA, *et al.*

DEFENDANTS

MEMORANDUM OPINION AND ORDER

This is a wrongful foreclosure case. Plaintiff's Amended Complaint [1-3] appears to have been cobbled together from a variety of outside sources, and it is mostly incoherent. However, she appears to claim that the current owner of her mortgage, Wells Fargo, has no right to foreclose because of a fraudulent assignment in the mortgage's chain of ownership. Specifically, Plaintiff argues that the assignment violated a Pooling and Servicing Agreement ("PSA") among certain parties in the chain of ownership, including Defendants Wells Fargo, Argent, and Citi Residential Lending. Defendant Argent Mortgage Company, LLC filed a Motion to Dismiss [47] pursuant to Rule 12(b)(6). For the reasons provided below, the motion is **granted**.

A. *Standard of Review*

To survive a motion to dismiss under Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Great Lakes Dredge & Dock Co. LLC v. La. State*, 624 F.3d 201, 210 (5th Cir. 2010) (punctuation omitted). "To be plausible, the complaint's factual allegations must be enough to raise a right to relief above the speculative level." *Id.* (punctuation omitted). The Court must "accept all well-pleaded facts as true and construe the

complaint in the light most favorable to the plaintiff.” *Id.* But the Court will not accept as true “conclusory allegations, unwarranted factual inferences, or legal conclusions.” *Id.* Likewise, “a formulaic recitation of the elements of a cause of action will not do.” *PSKS, Inc. v. Leegin Creative Leather Prods., Inc.*, 615 F.3d 412, 417 (5th Cir. 2010) (punctuation omitted). “While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679, 129 S. Ct. 1937, 1950, 173 L. Ed. 2d 868 (2009).

Plaintiff presented several exhibits [52-1] in response to Defendant’s motion. “[W]hen matters outside the pleading are presented with a motion to dismiss under Rule 12(b)(6), a district court has complete discretion to either accept or exclude the evidence.” *Gen. Retail Servs., Inc. v. Wireless Toyz Franchise, LLC*, 255 F. App’x 775, 783 (5th Cir. 2007); *see also* FED. R. CIV. P. 12(d). If the Court considers the matters outside the pleadings, “the motion must be treated as one for summary judgment under Rule 56,” and “[a]ll parties must be given a reasonable opportunity to present all material that is pertinent to the motion.” FED. R. CIV. P. 12(d). However, “documents that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff’s complaint and are central to her claim.” *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000).

The Court elects to not consider matters outside the pleadings. Therefore, it will disregard Plaintiff’s exhibits [52-1]. However, the assignments [47-1, 47-2, 47-3] attached to Defendant’s motion were referred to in Plaintiff’s Amended Complaint [1-3], and they are central to her claim. Therefore, they are part of the pleadings, and the

Court may consider them.

B. Discussion

Among other things, Argent argues that Plaintiff has no standing to challenge the assignments in her mortgage's chain of ownership. Argent is correct. This Court has previously held that a mortgagor has no standing to challenge a note's assignment based on an alleged PSA violation. *See Deutsche Bank Nat'l Trust Co. v. Frazier*, No. 1:14-CV-451-LG-RHW, 2015 U.S. Dist. LEXIS 71016, at *4-*5 (S.D. Miss. June 2, 2015); *Jefferson v. Mortg. Elec. Registration Sys., Inc.*, No. 1:12-CV-368-HSO-RHW, 2013 U.S. Dist. LEXIS 188120, 2013 WL 8702700, at *4 (S.D. Miss. Dec. 13, 2013). "[T]he law is well-settled that borrowers . . . who are neither parties to nor third-party beneficiaries of the PSA . . . lack standing to enforce provisions of a PSA or to otherwise challenge transfers allegedly made in violation of the PSA." *Frazier*, 2015 U.S. Dist. LEXIS 71016 at *4 (citing *Farkas v. GMAC Mortg., LLC*, 737 F.3d 338, 342 (5th Cir. 2013); *Shaver v. Daffin Frappier Turner & Engel, LLP*, 593 F. App'x 265, 272 (5th Cir. Nov. 5, 2014)); *see also Reinagal v. Deutsche Bank Nat'l Trust Co.*, 735 F.3d 220, 226 (5th Cir. 2013); *Morlock, LLC v. JP Morgan Chase Bank, N.A.*, 587 F. App'x 86, 88 (5th Cir. 2014).

Plaintiff appears to rely on New York law, citing the lower court decision of *Wells Fargo Bank, N.A. v. Erobo*, 972 N.Y.S. 2d 147 (N.Y. Sup. Ct. 2013). However, as many courts have noted when addressing the same boilerplate wrongful foreclosure arguments, the trial court's decision in *Erobo* was reversed on appeal, and the New York appellate court held that "Erobo, as a mortgagor whose loan is owned by a

trust, does not have standing to challenge the . . . possession or status as assignee of the note and mortgage based on purported noncompliance with certain provisions of the PSA” 127 A.D.3d 1176, 9 N.Y.S.3d 312, 314 (N.Y. App. Div. 2015). Therefore, under New York law, Plaintiff has no standing to challenge the assignment of her mortgage based on alleged noncompliance with the PSA. *See Ferguson v. Bank of N.Y. Mellon Corp.*, 802 F.3d 777, 782 (5th Cir. 2015); *Ermisch v. HSBC Bank, N.A.*, 2015 U.S. App. LEXIS 20253, at *5-*6 (5th Cir. Nov. 20, 2015). Likewise, under Mississippi law, one who is not a party to a contract has no standing to seek redress for a breach of that contract. *See Cottingham v. GMC*, 119 F.3d 373, 380 (5th Cir. 1997); *Burns v. Washington Savings*, 171 So. 2d 322, 324 (Miss. 1965); *Delta Constr. Co. v. Jackson*, 198 So. 2d 592, 597 (Miss. 1967).

C. Conclusion

For these reasons, the Court finds that Plaintiff has no standing to challenge the assignment of her mortgage based on alleged violations of the PSA. Accordingly, the Court **grants** Defendant Argent Mortgage Company, LLC’s Motion to Dismiss [47].

SO ORDERED AND ADJUDGED this 3rd day of March, 2016.

s/ Keith Starrett
UNITED STATES DISTRICT JUDGE